

TWENTY-FIRST DAY
(Wednesday, February 15, 1995)

The Senate met at 10:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Ellis, Gallegos, Galloway, Harris, Haywood, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Nixon, Patterson, Ratliff, Rosson, Shapiro, Sibley, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Sims.

A quorum was announced present.

The Reverend Dana Carson, Praise Tabernacle Outreach and Family Worship Center, Austin, offered the invocation as follows:

Dear God, the creator of all living things, we come reverentially to acknowledge Your goodness and mercy, while beseeching Your existential favor. Dear Lord, I ask as these men and women are gathered collectively in this building and in Your presence, that You would open the mighty windows of heaven and pour out an abundance of truth and wisdom. Let Your divine insight be made known to all that are present, so that they may carry out not the agenda of human desire, but Your heavenly will, that all men and women may experience love, justice, and peace. Now let there be a spirit of unity present that will bind all hearts together for the good of mankind. In Jesus' name, Your servant prays. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Truan, Senator Sims was granted leave of absence for today on account of illness.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 16

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of S.C.R. 16.

CO-AUTHORS OF SENATE CONCURRENT RESOLUTION 24

On motion of Senator Patterson and by unanimous consent, Senators Madla, Nelson, Shapiro, and Wentworth will be shown as Co-authors of S.C.R. 24.

CO-AUTHOR OF SENATE BILL 43

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of S.B. 43.

CO-AUTHOR OF SENATE BILL 45

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 45**.

CO-AUTHOR OF SENATE BILL 46

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 46**.

CO-AUTHOR OF SENATE BILL 47

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 47**.

CO-AUTHOR OF SENATE BILL 48

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 48**.

CO-AUTHOR OF SENATE BILL 51

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 51**.

CO-AUTHOR OF SENATE BILL 78

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 78**.

CO-AUTHOR OF SENATE BILL 79

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 79**.

CO-AUTHOR OF SENATE BILL 81

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 81**.

CO-AUTHOR OF SENATE BILL 82

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 82**.

CO-AUTHOR OF SENATE BILL 111

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 111**.

CO-AUTHOR OF SENATE BILL 112

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 112**.

CO-AUTHOR OF SENATE BILL 149

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 149**.

CO-AUTHOR OF SENATE BILL 162

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 162**.

CO-AUTHOR OF SENATE BILL 167

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 167**.

CO-AUTHOR OF SENATE BILL 182

On motion of Senator Rosson and by unanimous consent, Senator Moncrief will be shown as Co-author of **S.B. 182**.

CO-AUTHOR OF SENATE BILL 267

On motion of Senator Shapiro and by unanimous consent, Senator Sims will be shown as Co-author of **S.B. 267**.

CO-AUTHOR OF SENATE BILL 438

On motion of Senator Madla and by unanimous consent, Senator Zaffirini will be shown as Co-author of **S.B. 438**.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 46

On motion of Senator Nelson and by unanimous consent, Senator Patterson will be shown as Co-author of **S.C.R. 46**.

SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced, read first time, and referred to the committees indicated:

S.C.R. 50 by Brown, Shapiro Criminal Justice
Resolving that the Legislature of the State of Texas take any action necessary to intervene on its own behalf in the Ruiz litigation or to file suit to reopen that litigation.

S.B. 366 by Armbrister State Affairs
Relating to the continuation and functions of the Texas State Library and Archives Commission, including the commission's involvement with the management of governmental records.

S.B. 545 by Rosson Health and Human Services
Relating to the consent of a person 16 years of age or older to donate blood or blood components.

S.B. 546 by Rosson Education
Relating to degree programs, research centers, and schools at The University of Texas at El Paso.

S.B. 547 by Gallegos Education
Relating to emergency care instruction in public school health classes.

S.B. 548 by Madla Health and Human Services
Relating to the regulation of podiatry.

- S.B. 549** by Leedom Jurisprudence
Relating to the storage and sale of certain vehicles.
- S.B. 550** by Nixon Natural Resources
Relating to the authority of the Railroad Commission of Texas to receive and administer gifts, grants, and donations.
- S.B. 551** by Harris Jurisprudence
Relating to the creation of municipal courts of record in Pantego.
- S.B. 552** by Turner Health and Human Services
Relating to the establishment of a reeducation program for certain registered nurses.
- S.B. 553** by Nelson Economic Development
Relating to a discount on motor vehicle insurance premiums for certain students based on academic achievement.
- S.B. 554** by Nelson Health and Human Services
Relating to the eligibility of certain minor parents to receive AFDC benefits.
- S.B. 555** by Nelson Criminal Justice
Relating to voir dire examinations in criminal cases.
- S.B. 556** by Truan State Affairs
Relating to the operation of overweight vehicles on highways; providing criminal penalties.
- S.B. 557** by Cain Finance
Relating to the rate of state contributions to the Teacher Retirement System of Texas.
- S.B. 558** by West Economic Development
Relating to construction contract provisions and the creation of and management policies applicable to a trust account created to hold funds associated with a construction contract.
- S.B. 559** by Patterson Intergovernmental Relations
Relating to the bonding or insurance requirements of a political subdivision for the issuance of certain plumbing permits.
- S.B. 560** by Patterson Jurisprudence
Relating to disposal of abandoned vehicles.
- S.B. 561** by Sibley Intergovernmental Relations
Relating to the election of the members of the board of directors of the Jack County Hospital District.
- S.B. 562** by Armbrister Health and Human Services
Relating to the rulemaking authority of the Texas Board of Chiropractic Examiners.
- S.B. 563** by Armbrister Intergovernmental Relations
Relating to the authority to abolish the position of marshal in a Type B general law city.

S.B. 564 by Armbrister Criminal Justice
Relating to the application of the professional prosecutors law to the district attorney for the 24th Judicial District.

S.B. 565 by West Criminal Justice
Relating to prohibiting the transfer of inmates who are serving sentences for violent offenses to state jail felony facilities.

S.B. 566 by Barrientos Education
Relating to the investment capital fund.

S.B. 567 by West Criminal Justice
Relating to the opening statement of the defendant in a criminal trial.

S.B. 568 by West Criminal Justice
Relating to adding prosecutors of juvenile crime to county juvenile boards.

MESSAGE FROM THE HOUSE

House Chamber
February 15, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 35, Paying tribute to the life of Jacqueline Lee Bouvier Kennedy Onassis.

H.C.R. 10, In memory of Rose Fitzgerald Kennedy.

H.C.R. 72, In memory of W. M. "Pete" Rodes.

Respectfully,

Cynthia Gerhardt, Chief Clerk
House of Representatives

CAPITOL PHYSICIAN

The "Doctor for the Day," Dr. John Edward Green III of San Antonio, was introduced to the Senate by Senator Wentworth.

The Senate expressed appreciation and gratitude to Dr. Green for participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Moncrief was recognized and introduced to the Senate a group of executive directors of family violence shelters within Texas.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 10:45 a.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
SENATE BILL 25 ON SECOND READING**

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 25, Relating to exemplary damages in civil suits. (Submitted by Governor as an emergency matter)

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 25 ON THIRD READING**

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.S.B. 25** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

REASON FOR VOTE

Senator Barrientos submitted the following reason for vote:

C.S.S.B. 25 was overall a beneficial bill, but I voted for it with grave reservation because of the impact it would have on cases such as the Yogurt Shop Murders in Austin.

BARRIENTOS

MESSAGE FROM THE HOUSE

House Chamber
February 15, 1995

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 30, Granting the Texas YMCA youth and government program permission to use the house and senate chambers.

H.C.R. 9, Designating February 1995 as Public School Board Members Month in Texas.

Respectfully,
Cynthia Gerhardt, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate a delegation of Texas librarians.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Whitmire was recognized and introduced to the Senate guests from the Baytown Pilot Club.

The Senate welcomed its guests.

SENATE BILL 414 ON SECOND READING

Senator Montford moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 414** be taken up for consideration at this time:

S.B. 414, Relating to the restricted sale of wine for off-premises consumption by the holder of a winery permit located in certain dry areas.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 414** as follows:

In SECTION 1, delete proposed Sec. 16.05(b)(3)(C) (introduced version, page 2, line 3) and insert the following:

"(C) the wine is manufactured, bottled, and sold on the winery premises; and"

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 414 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 414** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**SENATE CONCURRENT RESOLUTION 46
ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution were suspended to consider at this time on its second reading:

S.C.R. 46, Calling for participation in and the convening of the Conference of the States to propose, debate, and vote on elements of an action plan to restore checks and balances between states and the national government.

The resolution was read second time and was adopted by a viva voce vote.

SENATE BILL 172 ON SECOND READING

Senator Luna moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **S.B. 172** be taken up for consideration at this time:

S.B. 172, Relating to certain records of transactions conducted under durable powers of attorney.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time.

Senator Luna offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 172** as follows:

(1) In Section 1 of the bill, in proposed Section 490A, Texas Probate Code (page 1, lines 16-17), strike the second sentence of Subsection (b).

(2) In Section 1 of the bill, in proposed Subsection (c), Section 490A, Texas Probate Code (page 1, line 19), strike "third" and substitute "fourth".

The committee amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 172 ON THIRD READING

Senator Luna moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **S.B. 172** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 215 ON SECOND READING

Senator Truan moved that the regular order of business, Senate Rule 7.13, and Section 5 of Article III of the State Constitution be suspended and that **C.S.S.B. 215** be taken up for consideration at this time:

C.S.S.B. 215, Relating to the establishment of a self-employment assistance program.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend Section 1. of C.S.S.B. 215, by adding Sec. 303.005(c) that shall read as follows:

"The Commission shall be authorized to enter into interagency agreements with other state agencies to facilitate the goals of this program. Those goals include technical assistance, as well as assistance with accessing capital, bonding or any other needs necessary for small business success."

The amendment was read and was adopted by a viva voce vote.

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.S.B. 215 as follows:

Amend SECTION 2 of the bill by adding Subsection (c) (committee printing, page 2, between lines 60 and 61) to read as follows:

(c) Notwithstanding Subsection (b) of this section, this Act expires December 8, 1998.

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 215 ON THIRD READING**

Senator Truan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that C.S.S.B. 215 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Harris asked to be recorded as voting "Nay" on the final passage of the bill.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Bivins.

Senator Bivins moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 30, Nays 0.

Absent-excused: Sims.

Chief Administrative Law Judge, State Office of Administrative Hearings: JUDGE STEVEN L. MARTIN, Travis County.

Members, State Bar of Texas Board of Directors: WES JUREY, El Paso County; LENNIE C. SIMS, Collingsworth County; BRUCE A. SMILEY, Bexar County; FRENCH ANNE YOUNG, Harris County.

Members, Texas Board of Architectural Examiners: MARICELA RODRIGUEZ BARR, Travis County; MARY ANN BRYAN, Harris County; MARY FRENCH CABLE, Hopkins County; DON W. KIRK, Tarrant County.

Members, State Board of Barber Examiners: HOYE D. TIBBETS, Johnson County; ALAN E. WARRICK, Bexar County.

Member, Texas Funeral Service Commission: ROBERT GAYLAN DUNCAN, Victoria County.

Members, State Commission on Judicial Conduct: CHIEF JUSTICE WILLIAM G. "BUD" ARNOT III, Taylor County; JEAN BIRMINGHAM, Harrison County; JUDGE MARTIN J. CHIUMINATTO, Kleberg County; JUDGE MERRILL HARTMAN, Dallas County; CAROL JEAN MacLEAN, Johnson County.

Members, Texas Optometry Board: DR. BARRY OWEN MOORES, Fort Bend County; DR. WESLEY EDWARD PITTMAN, Limestone County; DR. SUSAN B. PLACE, Collin County; DONNYA ELLE STEPHENS, Nacogdoches County.

Member, State Pension Review Board: BRUCE COX, Tarrant County.

Member, Children's Trust Fund of Texas Council: THELMA SANDERS CLARDY, Dallas County.

SENATE BILL 544 REREFERRED

On motion of Senator Truan and by unanimous consent, **S.B. 544** was withdrawn from the Committee on Natural Resources and was rereferred to the Committee on Health and Human Services.

MEMORIAL RESOLUTION

H.C.R. 15 - (Wentworth): Paying tribute to the life of Lieutenant Kara Hultgreen.

CONGRATULATORY RESOLUTIONS

S.R. 216 - By West: Commending Josephine Torres on the occasion of her retirement for her accomplishments and dedication to the West Dallas Community Centers.

S.R. 217 - By Madla: Recognizing the Middle Rio Grande Development Council for its contributions to the citizens in the southwest area of Texas.

S.R. 218 - By Madla: Congratulating Sacred Heart Parish in Del Rio on the occasion of its 100th anniversary.

S.R. 219 - By Armbrister: Declaring February 22, 1995, Matagorda County Day.

S.R. 221 - By Bivins: Congratulating Mr. and Mrs. Jack Collins of Amarillo on the occasion of their 50th wedding anniversary.

S.R. 222 - By Shapiro, Leedom: Declaring March 21, 1995, Richardson Day at the State Capitol.

S.R. 223 - By Whitmire: Congratulating Benjamin W. Bergh on achieving the rank of Eagle Scout.

S.R. 224 - By Whitmire: Congratulating Donald "Nathan" Merritt on achieving the rank of Eagle Scout.

S.R. 225 - By Lucio: Congratulating Maria Victoria on receiving the Mr. Amigo Award and on being the guest of honor at the 1995 Charro Days/Mr. Amigo Fiesta in Brownsville.

ADJOURNMENT

On motion of Senator Truan, the Senate at 11:48 a.m. adjourned, in memory of Fred Davenport, Jr., until 10:00 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

February 14, 1995

NATURAL RESOURCES — S.B. 418

February 15, 1995

CRIMINAL JUSTICE — S.B. 43, S.B. 44 (Amended), S.B. 46 (Amended), S.B. 47 (Amended), C.S.S.B. 217

INTERGOVERNMENTAL RELATIONS — S.B. 253, S.B. 387, S.B. 496, S.B. 449 (Amended), C.S.S.B. 261

HEALTH AND HUMAN SERVICES — S.B. 509, S.B. 323, S.B. 297, S.B. 337

**In Memory
of
Fred Davenport, Jr.**

Senator Armbrister offered the following resolution:

(Senate Resolution 184)

WHEREAS, The Senate of the State of Texas joins the citizens of Texas in mourning the loss of Fred Davenport, Jr., well-known businessman and community leader, who died December 16, 1994, at the age of 56; and

WHEREAS, Director of State Relations for the Government and Regulatory Affairs Department of Houston Industries, Incorporated, since 1986, Fred Davenport was respected for his integrity and hard work by elected officials and lobbyists; and

WHEREAS, A native of Rosebud, Texas, Mr. Davenport began working for Houston Lighting and Power Company in 1957 as a Customer Service Representative; he advanced to several supervisory positions before becoming Credit Manager in the Customer Service Department in 1976; from 1980 until 1986, he was District Manager for Fort Bend County; and

WHEREAS, Mr. Davenport continued his education at the University of Houston where he earned a degree in business technology; and

WHEREAS, Recognized for his exceptional interpersonal skills and knowledge of utility operations, Fred Davenport was appointed as Houston Industries' Director of Legislative Relations at the state level in 1986 and became a leader in the Austin community; and

WHEREAS, Elected chairman of the electric utility lobbyists, Mr. Davenport represented his company's interests with dignity and diplomacy, and he was always a moderating influence in time of heated debates, earning the highest regard of all those who knew and worked with him; and

WHEREAS, Wherever he lived, Fred Davenport became deeply involved in numerous community organizations and served on many civic boards; he spent his leisure time hunting, golfing, and fishing; and

WHEREAS, Throughout his distinguished career, Mr. Davenport was supported by his wife, Caroline, and their children, Donna and David; he will be deeply missed by all who knew and loved him; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 74th Legislature, hereby extend sincere condolences to the family of Fred Davenport, Jr.: his wife, Caroline; his daughter,

Donna Hyde; his son, David Davenport; his granddaughters, Rebecca and Rachael Hyde and Lauren and Lindsey Davenport; his mother, Athylene Davenport; and his brother, Ken Davenport; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Fred Davenport, Jr.

The resolution was again read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Monday, February 13, 1995.

Senator Armbrister was recognized and introduced to the Senate the family of Fred Davenport, Jr.: his wife, Caroline; his son, David, and wife, Karen, with their children Lauren and Lindsey; his daughter, Donna Hyde, and husband, Richard Hyde, with their children Rebecca and Rachael; his mother, Athylene Davenport; and his brother, Ken Davenport.

The Senate welcomed its guests and expressed its condolences.